



# The International Standard for Pilots Organisations (ISPO) - Providing legal support to Pilot Organisations and the associated Port Authority

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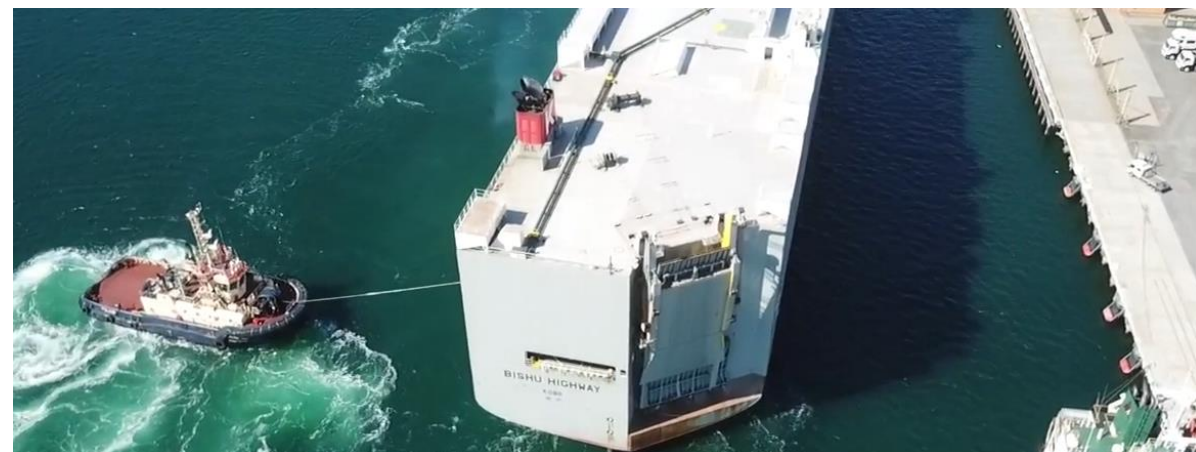


# The IMO view on Pilotage/Port Marine Operations

<http://www.imo.org/en/OurWork/Safety/Navigation>

Pilots with local knowledge have been employed on board ships for centuries to guide vessels into or out of port safely - or wherever navigation may be considered hazardous, particularly when a shipmaster is unfamiliar with the area.

In addition to local knowledge and expertise, pilots are able to provide effective communication with the shore and with tugs, often in the local language.







# Port Management... structures and responsibilities



## Managing a modern port ...its different now!

- Multiple stakeholders in a modern port have the potential to cause multiple diverse tensions and this may pressure or even undermine the Port Authority.  
(Lloyds List; Harbour masters carry heavy duties; 25 September 1997)
- Port Authority management procedures must be responsible for the details and correct compliance of all bespoke SMS's (*such as ISPO*) for pilotage and the governance of marine operations (UK Port Management Guidelines 2016 – 9.2.1 and 11.3.4)
- “Due diligence refers to another level of safety management and may assist where judicial liability is a factor.” (Aust Port Mngt guidelines 2015)





# Customary Law and The responsibilities of The Port Authority –



The functions and duties of harbour authorities (*irrespective of their legal and commercial status*) can be legally classified as: (Douglas and Geen – Port shipping Law and (2004) 18 MLAAZ Journal)

- Ensuring the provision and maintenance of harbour facilities i.e. quays, wharves;
- Regulating activities in the harbour such as ship movements i.e. pilot and tug supply in the harbour.

Any form of a port incident will be perceived as “a Port Authority failure” and, in customary law..... the PA is responsible for the satisfactory execution of **all** activities behind the port gate. (The Law of Harbours and Pilotage; R Douglas and G Geen; 4th ed.; 1993; @ 17)

Consequently PA’s need to have a strong “**due diligence**” approach when managing “marine operations” duties in the port.(The Law of Harbours and Pilotage; R Douglas and G Geen; 4th ed.; 1993; @ 17)







# An example of perceived PA responsibilities -The Bos 400 incident



- Tow broke loose – CTL on the rocks – **8 miles** from Cape Town port limits – bad weather
- 100 million USD Claim against SA Port Authority – ballooned to USD 130 million with interest claims.
- The accusation.... poor SMS and QM management protocol for the convoy's arrival by Port Authority, failing to “look after the convoy” in heavy weather – poor service (management protocol) from the pilots....refused to berth the barge in heavy swell - convoy ordered to turn around 8 miles from port limits - tow line parted – barge aground.
- Never went to court – plaintiffs withdrew of years of deliberation on whether the case could be won





Edition 2 – November 2008

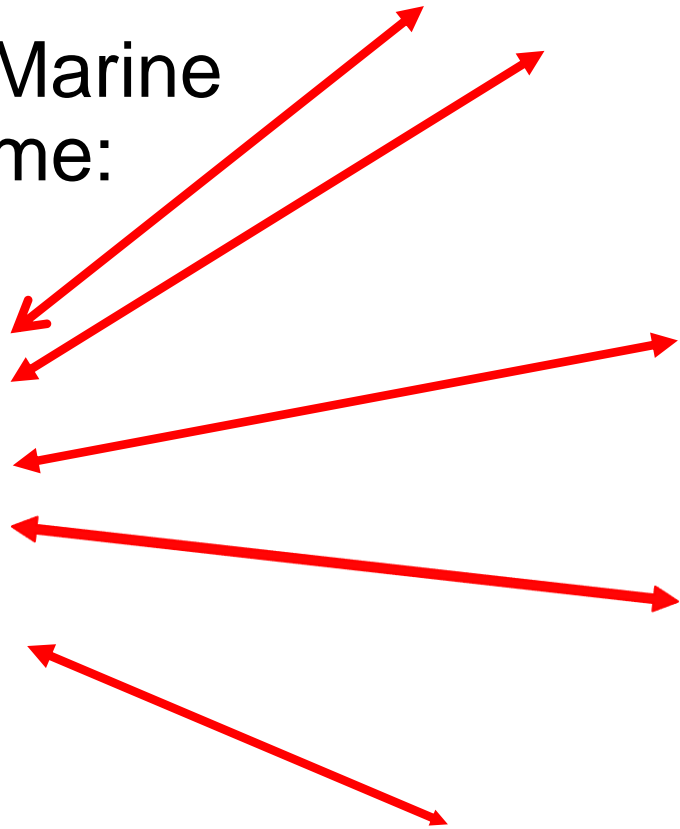
# Ensuring the right Pilotage & Marine Operations Management regime:

- Make it relevant.
- Make it bespoke.
- Make it DEFENCIBLE.



AMSA MO 2011/1

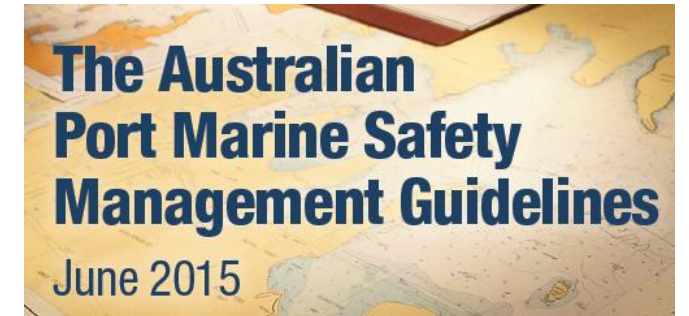
Marine Orders Part 54, issue 5 (Coastal pilotage)



A Guide to Good Practice on  
Port Marine Operations

Prepared in conjunction with the  
Port Marine Safety Code 2016

Moving Britain Ahead



Port Marine Safety Code

For all UK Harbour Authorities and other  
marine facilities, berths and terminals



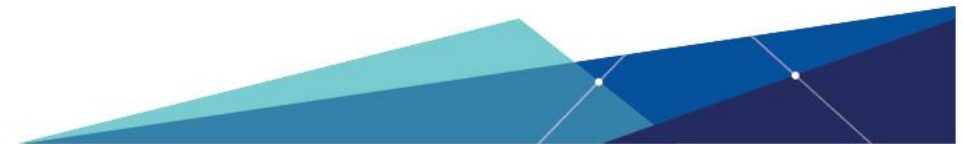
# Risk and the relevance of following a tailor made pilotage SMS standard



Risk reduction is “the focus on doing all that is reasonably practicable” to reduce risks. This entails applying **relevant good practice** and then applying further safety measures until the money, time and trouble required become grossly disproportionate to the risk averted” (P. Brighton , Risk Management )

The Australian Transport Council (ATC) has stated that the **primary objective** of a pilot organization (under the PA) is to **manage the risk** within the port or pilotage area during pilotage. A (*fit for purpose*) pilot organization's SMS should address all significant risks identified using **a recognised methodology..**

(Australian Transport Council, *National Marine Guidance Manual- Guidelines for Marine Pilotage Standards in Australia, Edition 2*, NMSC, November 2008. )







## Views from official sources on port marine operations litigation and relevant guidelines in Australia

- The courts in Australia are tending to take a very harsh view of safety management systems based on methodologies backed by experts but contrary to common sense. (Pilots Organisations Safety Management Systems conference (POSMS) – Sydney 2015)
- The ISPO standards are based on relevant IMO requirements, such as the ISM Code, and recommendations of recognized pilotage associations (Australian Transport Safety Board 2012)
- Only a SMS underpinned by a ‘Due Diligence’ approach can provide a credible legal defense against negligence after an accident (POSMS -2015)
- The “**Due Diligence formula for a PA**” = Proper identification and classification of Risks by pilots PLUS the application of the risk controls based on the distilled wisdom of all the associated pilots operating in the port/channels : (IBID)

## Legal views regarding 3<sup>rd</sup> party “verification”

- A 3<sup>rd</sup> party endorsement verification serves as evidence or assurance (US Legal.com).
- A “verification” is used primarily to affirm or attest a position.
- Verification can be used to serve as evidence or to substantiate a matter. (US Legal.com)
- To “verify” is to call upon, rely on, or quote as an authority. (Blacks Law Dictionary ). *It is suggested that the external audit regulations of ISPO are specifically designed for ISPO auditors to be viewed as a relevant authority.*
- a third-party review... an independent verification..... and due diligence..... **are needed** to play an important role in risk management, ensuring safe operations and legal confidence that correct methodology and bespoke systems are being applied. (Vericomp Consulting - 2019)

The above suggests that “**Appropriate Qualifications**” may be examined, when leaning on 3<sup>rd</sup> party verification for legal benefit



# Litigation and claims in pilotage:

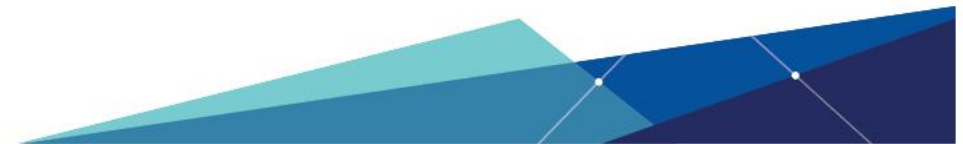
The incident, the proximate cause and extenuating circumstances





## Port Claims and liability

- In a modern port ....the shipowner can now be the client of **(A)** a state port authority, or of **(B)** a private quay lease holder or of **(C)** a private operator such as a stevedoring company or **(D)** a combination of any or all of these at once. (Texada Mines Pty v The Afovos 1974; 2 Lloyds Rep 168 )
- The classic “knock on” effect to other port suppliers also adds a further complication when trying to decide where to place responsibility in the event of a claim. (Maritime Law; C Hill; 3rd ed.; Remoteness of Damage pg 183 -1989)
- It is therefore difficult to establish the “proximate cause” of a port incident and , as they will be seen as “units” (in common law) when investigating an incident. (International Law of the Sea; C.J. Columbus; 1959; @ 150 and the UK Marine Safety Code -)





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## The Sea Empress Claim and the “proximate cause”

- The Sea Empress (1996) ended up as a 37 Million pounds claim against the port for operating under an ineffective SMS for the marine operations (Appportioning Blame: The Liability of Port Authorities in Light of the *Sea Empress* Incident – Milaanz 2004 )



## The Proximate cause:

- Marine law will follow the proximate cause route in the unravelling of a port incident investigation:  
(Chorely and Giles – proximate cause)
- *In the Sea Empress incident the **SMS (Pilot training)** was found to be lacking and a direct cause of the incident ...the weak SMS at the time was therefore one of the **proximate causes** of the accident. The Port authority was convicted on a breach of statutory duty . (UK MAIB 2015)*
- The UK Marine Safety **code** now requires a port to develop and maintain an effective and relevant marine operations SMS (commentary on the Sea Empress incident from Bentleys , Stokes and Lowless – 2011)
- It is noted that many pilotage/marine port operations in UK ports are now governed under ISPO





## Proximate cause?:

Jebel Ali crane pilotage accident: Crane CTL (in 2019 a Prominent P&I club has reported 239 ship to shore collision claims in ports in one year! )



## Proximate cause?:

Vancouver pilotage incident – est USD 40 Million in crane replacement and “knock on “ claims

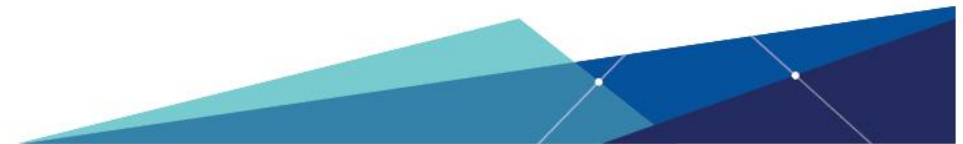






Bulk Carrier Incident Vietnam

Proximate cause?:





## Proximate cause ?:

The MSC passenger liner incident...allegedly engine control failure but investigation will still involve tugs and pilotage (g captain) : (tug wire reportedly parted)



## Proximate cause ?:

Containership incident Indonesia: Crane CTL – tug failure being investigated



Proximate cause ?:

Containership incident – Spain Barcelona : Crane CTL





# Proximate cause ?:

Containership incident – Indian Mumbai:



## Proximate cause?:

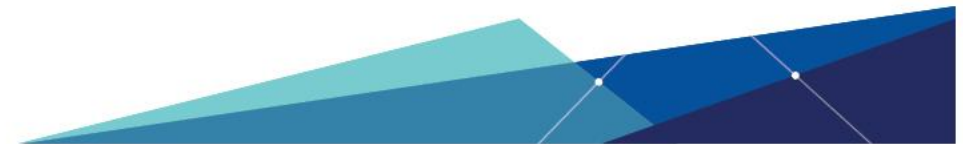
Brisbane warship incident ...Stern collided with quayside ([Feetmon and Channel 7 News](#))



## The legal risks facing pilot bodies and port authorities

It is suggested that there are 3 x main areas of concern in the event of a perceived “lack of due diligence” in the governance of Port Operations: (note: lack of due diligence can be seen as an extenuating circumstance)

- The “No liability” defence for the port/pilot organisation
- Direct or indirect civil claims against the port authority from private business concerns that may have suffered losses caused by a marine port operations incident .
- Loss of the “Safe Port Tag” should a port incident be able to prove that the incident was not caused by an unforeseen event, and the incident did not arise out **of the qualities or attributes of the port itself**. (The Khain Sea case – 1977)



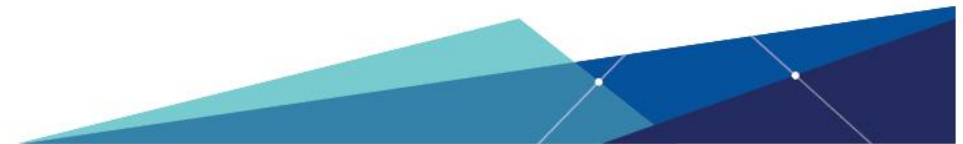


## Unsafe Port tag , shipping operations and the PA

- “Definition of a safe port ...” *A port will be safe if, .....the ship can reach it, use it and return from it without, being exposed to danger ....under good navigation and seamanship. If an **unforeseen event** causes and incident, the port will not lose its “safe port status”* (Ocean victory and Eastern city )

### **BUT**

- a failure to ensure an **appropriate POSMS** is in place will rarely, if at all, be considered an *unforeseen event* (2009- 23 A&NZ Mar LJ )
- A perceived weak SMS, may turn around, what appears to be and “**unforeseen event**” into part of **a wider systemic failing** by the port – leading to the port being declared “unsafe”. (UK Defence Club – From eastern City to Ocean Victory - italics added)
- *Note also.....* “The focus of unsafe “port claims” is very often on **the systems in place** for avoiding known physical dangers, as opposed to the physical dangers themselves, resulting in **a microscopic analysis** of the port systems, after an incident” (UK Defence Club – From eastern City to Ocean Victory )



## The critical safe port tag - a recent example

The Ocean Victory Case: Initial Claims for the incident **USD 137 Million** –

- Port marine operations failed to appreciate the dangers of the weather forecast
- Tugs unable (through ability and tug operation) to control vessel at breakwater
- No chance of “Pure pilot error” defence due to weak port operations management system
- Initial findings: Port was not safe (weather judged **not to be an unforeseen** weather event), charterers to pay for vessel loss – 7 years later , on appeal, port declared safe as weather event declared as “**unforeseen**”  
...claim back to owners underwriters.. port performance now under a counter claim from owner underwriters (Royal Court of Justice - Case No: A3/2013/2960)



# In summary:

3 important points in port litigation.....





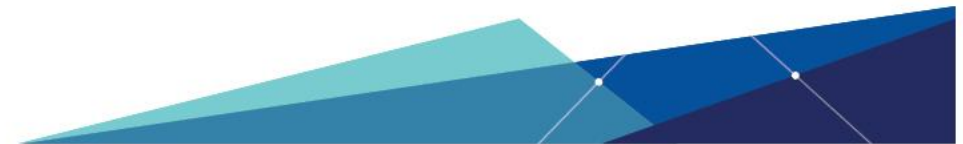


## A Case to go for ISPO accreditation -1



“the pilotage service provider must liaise with the Port Authority to ensure pilotage services are fully integrated into the port’s SMS. The pilot service provider must ensure the service is properly managed and take all reasonable steps to ensure a safe service is provided.

Pilotage service providers, (*in conjunction with the PA*) should be encouraged to develop a Pilotage Safety Management System to run under and in parallel with the PMSMS” *(UK 2016 and Australian Port Management 2015 guidelines)*





## LOC A Case to go for ISPO Accreditation - 2

“After a *marine operations* incident, a thorough examination of the safety of the port will usually be undertaken by owners.

In some cases this investigation will uncover significant flaws in the port, particularly when measured against the *marine operating standards* of a sophisticated modern port – all useful ammunition with which owners can attack charterers or *the port* .”

(Steamship Mutual – The unsafe port...who is at fault)



## LOC A Case to go for ISPO accreditation - 3

.....“As the law presently stands, the absence of a *good PMSMS* and a failure in an otherwise good system are indistinguishable.

This sets a very high standard for port authorities.

Nonetheless it is only fair (*to shipping*) that a port authority be expected to undertake its marine operations duties with precision and diligence – the success of international shipping depends on it”

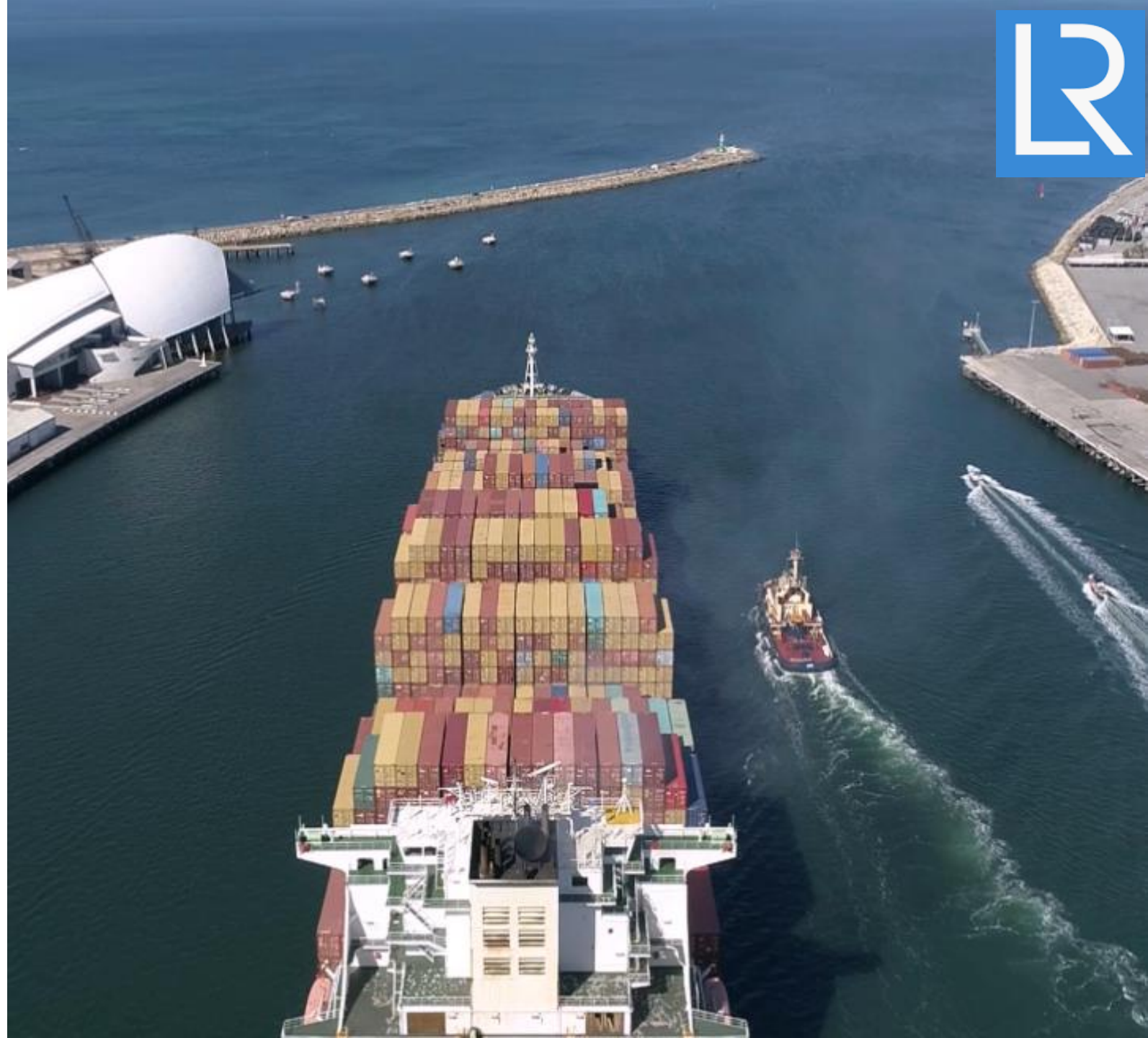
(A. McKinnon - *A & NZ Marine Law review*)





# In conclusion:


ISPO and legal  
defence?



## A) The pedigree of ISPO accreditation :

- a 3<sup>rd</sup> party audited pilotage management system, using STCW Class 1 auditors from selected Class societies – *(incl. competent verification that can legally serve as evidence of compliance)*
- tailor made by marine pilots, specifically, for the complex world of marine pilotage
- the standard is updated by pilots for constant improvement
- Adopts IMO pilotage resolutions and the material principals in leading Port Marine Safety Codes and guidelines
- pro-active and an ISM based approach to risk reduction
- a quality customer centric service.

## B) Correctly applied and audited :

- An ISPO accredited pilotage and port marine operations management system is specifically designed to demonstrate “due diligence”.
  - **Consequently ISPO accreditation can/should make a powerful defence statement in the examination of a port’s pilotage and marine operations during an incident**
- 



# The End

- happy to take questions

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